

(3) The survey agency may permit an individual who has not completed a training program to participate in a survey as a trainee if accompanied on-site by a surveyor who has successfully completed the required training and testing program.

[59 FR 56238, Nov. 10, 1994; 60 FR 50118, Sept. 28, 1995]

**§ 488.318 Inadequate survey performance.**

(a) HCFA considers survey performance to be inadequate if the State survey agency—

- (1) Indicates a pattern of failure to—
    - (i) Identify deficiencies and the failure cannot be explained by changed conditions in the facility or other case specific factors;
    - (ii) Cite only valid deficiencies;
    - (iii) Conduct surveys in accordance with the requirements of this subpart; or
    - (iv) Use Federal standards, protocols, and the forms, methods and procedures specified by HCFA in manual instructions; or
  - (2) Fails to identify an immediate jeopardy situation.
- (b) Inadequate survey performance does not—
- (1) Relieve a SNF or NF of its obligation to meet all requirements for program participation; or
  - (2) Invalidate adequately documented deficiencies.

**§ 488.320 Sanctions for inadequate survey performance.**

(a) *Annual assessment of survey performance.* HCFA assesses the performance of the State's survey and certification program annually.

(b) *Sanctions for inadequate survey performance.* When a State demonstrates inadequate survey performance, as specified in § 488.318, HCFA notifies the survey agency of the inadequacy and takes action in accordance with paragraphs (c) and (d) of this section.

(c) *Medicaid facilities.* (1) For a pattern of failure to identify deficiencies in Medicaid facilities, HCFA—

- (i) Reduces FFP, as specified in paragraph (e) of this section, and if appropriate;
- (ii) Provides for training of survey teams.

(2) For other survey inadequacies in Medicaid facilities, HCFA provides for training of survey teams.

(d) *Medicare facilities.* For all survey inadequacies in Medicare facilities, HCFA—

- (1) Requires that the State survey agency submit a plan of correction;
- (2) Provides for training of survey teams;
- (3) Provides technical assistance on scheduling and procedural policies;
- (4) Provides HCFA-directed scheduling; or
- (5) Initiates action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(e) *Reduction of FFP.* In reducing FFP for inadequate survey performance, HCFA uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that HCFA found to be noncompliant during validation surveys for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs in which HCFA conducted validation surveys during that quarter.

(f) *Appeal of FFP reduction.* When a State is dissatisfied with HCFA's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR part 16.

**§ 488.325 Disclosure of results of surveys and activities.**

(a) *Information which must be provided to public.* As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public, upon the public's request, by the State or HCFA for all surveys and certifications of SNFs and NFs:

- (1) Statements of deficiencies and providers' comments.
- (2) A list of isolated deficiencies that constitute no actual harm, with the potential for minimal harm.
- (3) Approved plans of correction.
- (4) Statements that the facility did not submit an acceptable plan of correction or failed to comply with the conditions of imposed remedies.

(5) Final appeal results.  
(6) Notice of termination of a facility.

(7) Medicare and Medicaid cost reports.

(8) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in §420.201 of this chapter.

(9) Names of individuals with direct or indirect ownership interest in a SNF or NF, as defined in §420.201 of this chapter, who have been found guilty by a court of law of a criminal offense in violation of Medicare or Medicaid law.

(b) *Charge to public for information.* HCFA and the State may charge the public for specified services with respect to requests for information in accordance with—

(1) Section 401.140 of this chapter, for Medicare; or

(2) State procedures, for Medicaid.

(c) *How public can request information.* The public may request information in accordance with disclosure procedures specified in 45 CFR part 5.

(d) *When information must be disclosed.* The disclosing agency must make available to the public, upon the public's request, information concerning all surveys and certifications of SNFs and NFs, including statements of deficiencies, separate listings of any isolated deficiencies that constitute no actual harm, with the potential for minimal harm, and plans of correction (which contain any provider response to the deficiency statement) within 14 calendar days after each item is made available to the facility.

(e) *Procedures for responding to requests.* The procedures and time periods for responding to requests are in accordance with—

(1) Section 401.136 of this chapter for documents maintained by HCFA; and

(2) State procedures for documents maintained by the State.

(f) *Information that must be provided to the State's long-term care ombudsman.* The State must provide the State's long-term care ombudsman with the following:

(1) A statement of deficiencies reflecting facility noncompliance, including a separate list of isolated deficiencies that constitute no harm with the potential for minimal harm.

(2) Reports of adverse actions specified at §488.406 imposed on a facility.

(3) Written response by the provider.

(4) A provider's request for an appeal and the results of any appeal.

(g) *Information which must be provided to State by a facility with substandard quality of care.* (1) To provide for the notice to physicians required under sections 1819(g)(5)(C) and 1919(g)(5)(C) of the Act, not later than 10 working days after receiving a notice of substandard quality of care, a SNF or NF must provide the State with a list of—

(i) Each resident in the facility with respect to which such finding was made; and

(ii) The name and address of his or her attending physician.

(2) Failure to disclose the information timely will result in termination of participation or imposition of alternative remedies.

(h) *Information the State must provide to attending physician and State board.* Not later than 20 calendar days after a SNF or NF complies with paragraph (g) of this section, the State must provide written notice of the noncompliance to—

(1) The attending physician of each resident in the facility with respect to which a finding of substandard quality of care was made; and

(2) The State board responsible for licensing the facility's administrator.

(i) *Access to information by State Medicaid fraud control unit.* The State must provide access to any survey and certification information incidental to a SNF's or NF's participation in Medicare or Medicaid upon written request by the State Medicaid fraud control unit established under part 1007, of this title, consistent with current State laws.

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**§ 488.330 Certification of compliance or noncompliance.**

(a) *General rules—*(1) *Responsibility for certification.* (i) The State survey agency surveys all facilities for compliance or noncompliance with requirements for long term care facilities. The survey by the State survey agency may be followed by a Federal validation survey.